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SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

No. 75-5943

DONALD LAMB, Petitioner )  
-vs- )  
STATE OF ILLINOIS, Respondent. )

(ON PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ILLINOIS)

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the Supreme Court of Illinois is reported at 61 Ill. 2d 383, 336 N.E. 2d 753.

The opinion of the Appellate Court of Illinois, First District, is reported at 21 Ill. App. 3d 827, 316 N.E. 2d 42.

STATEMENT OF JURISDICTION

Jurisdiction in this Court has been adequately alleged.

Question Presented for Review

Whether the evidence adduced at the hearing on petitioner's motion to suppress his confession was sufficient to warrant the finding of voluntariness made by the trial court.

STATEMENT OF THE CASE

The following is a summary of the evidence adduced at the hearing on petitioner's motion to suppress,

George Soil, a Chicago Police Investigator, testified that at approximately 8:00 p.m. on May 25, 1972, he and his partner, James Blackley, acting upon information received from Chicago Police Investigators Triggs and Deloughry, detained petitioner and transported him, without handcuffs, to the Maxwell Street Police Station for questioning as to his activities on the night of April 22, 1972. Petitioner told the officers that on the night in question he had gone to a church dance. (R. 56-57)

Officer Soil stated that petitioner was within his view at the police station from 8:00 p.m. on May 25, until 5:00 a.m. on May 26. (R. 27) Soil testified that during this time he did not personally touch petitioner, nor did he observe any type of physical brutality or harassment of petitioner. (R. 57-58)

Although Officer Soil did not personally interrogate petitioner on May 26, he was present that evening when petitioner gave a written statement to Assistant State's Attorney John Gervasi.

Investigator CHARLES HENSLEY testified that he spoke with the petitioner on May 25, 1972 at about 9:00 p.m. at the Maxwell Street Station. (R. 92) Prior to their conversation, Hensley advised petitioner of his constitutional rights and petitioner indicated that he understood them. (R. 83) This officer stated that he was in petitioner's presence at various intervals for approximately 4 or 5 hours. (R. 84) During that time petitioner was not the victim of any physical abuse. When the officer left duty at approximately 2:00 a.m. on May 26, he did not observe any marks or abrasions on petitioner's person. (R. 85) When he returned to duty at approximately 4:30 p.m. that same day, he observed petitioner to still be in good physical condition. (R. 85)

Chicago Police Investigator JOHN DELOUGHRY told the court that he initially observed petitioner at approximately 8:15 a.m. on May 26, 1972, in the Maxwell Street Station. (R. 97) Following

a conversation with Investigator Sykes of Area 4, Homicide, Officer Deloughry spoke to petitioner, and advised him of his constitutional rights by reading the rights from a card issued to the Confederation of Police. (R. 103) Officer Deloughry inquired of petitioner whether he understood what was read to him. Petitioner responded affirmatively. (R. 104) Officer Deloughry testified that petitioner was not handcuffed and that his physical condition at this time was normal and free from marks or abrasions. (R. 98-99)

Deloughry testified further indicating that on May 26, he was in petitioner's company continuously from 8:30 a.m. until 5:00 p.m. (R. 99) During this time, he and the petitioner visited the scene of the crime, traveled to the home of Robert Thatch and returned to the Maxwell Street Stationhouse. The officer then telephoned the Cook County State's Attorney's Office, after which petitioner was transported to 26th Street and California Avenue where he was joined by his mother who had been brought to this location at the behest of the officers.

(R. 99-100) The petitioner and his mother were subsequently transported back to the Maxwell Street Stationhouse. The petitioner was handcuffed only for intervals during the day and Deloughry explained that such restraint was normal operating procedure: one cuff was applied to petitioner's wrist and the other attached to a restraining ring on the wall of the interrogation room. (R. 101) The officer testified that when he applied the handcuffs he did not apply them with such force as to injure petitioner's skin. Officer Deloughry added that when he left the station at 5:00 p.m. petitioner's physical condition was the same as it had been in the morning (R.102)

FRANCIS O'DRISCOLL, Area 4 Youth Officer, testified that he initially observed petitioner at approximately 9:00 p.m. on May 26, 1972, in an interrogation room at the Maxwell Street Stationhouse. Also present were petitioner's mother, and Officers Hensley and Soil. Officer O'Driscoll testified that he did not observe any bruises or marks of discoloration on petitioner's person. (R. 71) Petitioner told the officer that he had previously been notified of his constitutional rights. (R. 72) Nonetheless, O'Driscoll again informed petitioner that he had a right to remain

silent; that anything that he said could and would be used against him in a court; that he had a right to consult a lawyer before any questioning; and that if he lacked financial ability to retain a lawyer, a lawyer would be appointed for him. (R. 73)

After each admonition, O'Driscoll inquired of petitioner if he understood and the petitioner replied affirmatively. (R. 73)

Shortly thereafter, Assistant State's Attorney John Gervasi arrived and again advised petitioner of his constitutional rights.

(R. 74) At this time petitioner, in the presence of his mother, Assistant State's Attorney Gervasi and Officers Soil, Hensley and O'Driscoll, issued the following statement, in substance:

He met Robert Bruce and Patrick Thatch at the corner of 21st and Trumbull, and he showed them a "blank gun." Bruce thought it was a real one and asked him if he was afraid to stick someone up. When petitioner told Bruce he was not, the youths went north on Trumbull "for the purpose of trying to find someone to stick up, or rob." They saw a man staggering in an alley near 1916 South Trumbull and decided to rob him. Thatch acted as a lookout. Bruce walked up to the man and petitioner was not far behind. Bruce asked the man for a quarter

and when the man said he did not have one, Bruce knocked him down and jumped on him. The man was screaming and hollering. When Bruce got up off the man, the petitioner saw a knife in Bruce's hand. As the man was getting up, holding his neck with both hands, the petitioner pulled the gun out and aimed it at him. The man said, "Please don't shoot", and the petitioner fired the gun in the air. Bruce had run away when the man got up off the ground. The petitioner saw two older ladies on a porch, and he then ran away, too. (R. 408-453)

Petitioner read the statement after it was typed, and initialed it at the bottom of each page.

EDWARD STABRAWA, a court reporter, testified that on May 26, 1972, at approximately 9:00 p.m. he recorded petitioner's statement (People's Exhibit No. 5) at the Maxwell Street Stationhouse. Assistant State's Attorney John Gervasi, petitioner's mother, and Detectives Soil, Hensley, and O'Driscoll were all present during the recording of the statement. (R. 36) Mr. Stabrawa testified that he observed petitioner's physical condition at the time - in particular, petitioner's wrist - and saw nothing unusual about the youth. Immediately following the taking of the statement, Stabrawa photographed the petitioner, the mother, and the Assistant State's Attorney (People's Exhibit No. 1) who all then signed the reverse side of the picture. Stabrawa also signed

the photograph, indicating that the exposure was made on May 26, 1972 at 10:00 p.m. (R. 41-42)

Petitioner's mother, MRS. DELORES LAMB, testified that at approximately 10:00 p.m. on May 25, 1972 she was visited by two police officers who informed her that her son was in custody. Mrs. Lamb told them that due to the lateness of the hour she would have to wait until the next day to see him. (R. 112)

She testified that at approximately 3:00 p.m. on May 26, she met with her son at the Cook County Courthouse where she remained with him until they were transported by police officers back to Maxwell Street. Subsequently she was driven home by the officers. (R. 113) Mrs. Lamb indicated that she returned to the stationhouse at approximately 8:00 p.m. that evening and spoke with her son again as he was preparing to issue his written statement. Mrs. Lamb further testified, on cross-examination, that when she was at 26th and California, she told petitioner, "if he had done anything to tell the truth." (R.116) Mrs. Lamb was present in the room at Maxwell Street Station when her son gave the written

statement. (R. 117) She was also present when the photograph (People's Exhibit No. 1) was taken by the court reporter. She identified her son, the State's Attorney and herself as the individuals in the picture, saying that her son's physical condition was accurately depicted by the photograph. (R. 118)

Petitioner, DONALD LAMB, testified in his own behalf. He stated that at approximately 6:00 p.m. on May 25,-1972, he was detained by Officer Soil and Soil's partner, and was taken to the second floor of the Maxwell Street Stationhouse. (R. 123-126) Petitioner initially indicated that Officer Soil was the only person with him at this time but subsequently amended his testimony to indicate that Soils' partner was also there. (R. 126) Petitioner testified that he had a conversation with Officer Soil concerning "an alleged incident which happened back in April"; that he told the officer that he had nothing to do with it (the incident); that Soil told him he was lying; and that Soil's partner then hung him up by handcuffs over a window bar on "tippy-toe" for a period of 1/2 hour. (R. 128-129) When he was removed from this position, petitioner was placed in a chair and handcuffed to a ring in the wall. He

was then informed of his constitutional rights by Officer Soil and was questioned further as to his activities on April 22, 1972.

(R. 130-132) Petitioner indicated that he asked Officer Soil whether he could leave to which question Soil answered affirmatively. However, petitioner remained alone in the interrogation room overnight. And he slept in the chair. Petitioner testified that his sleep was fitful. (R. 135)

Petitioner further testified that his next contact with police officers was at approximately 7:30 a.m. on May 26, when he was asked by Officer Soil if he was hungry. Petitioner indicated that he was and placed an order for a Polish sausage and pop, which were brought to him, along with a package of cigarettes.

(R. 134-135) Later in the evening of May 26, petitioner again requested food and was brought a "Big Mac" hamburger, french fries and orange pop. Petitioner told the court that on that same evening, prior to issuance of his statement, Investigators Deloughry and Hensley hung him up again, struck him in the abdomen three times, and threatened him with "street gang violence." (R. 140-152)

Under cross-examination, petitioner indicated that it was Officer Soil, as opposed to Soil's partner, who "hung him up" on the evening of May 25, (R. 170) Petitioner further indicated that on May 26, when he was transported to the County Courthouse, he had a private conversation with his mother in which he informed her that he had "been strung up" on the previous night. Upon being questioned as to whether he heard his mother's earlier testimony in which she failed to indicate that she had such a conversation with him, petitioner replied that "she probably doesn't remember." (R. 182)

Petitioner admitted that he was informed of his constitutional rights upon first being brought to the police station on May 25. (R. 203) He further admitted that after he gave the written statement he read it (R. 192), placed his initials on every page (R. 193), made a correction on it (R. 194), and signed it (R. 194, 205). He said Officers Hensley and Deloughry were present when he signed the statement, and that they did not make any threatening

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gestures to him at the time. (R. 207)

On redirect, Petitioner testified that the Assistant State's Attorney, Officers Hensley and Delonghry, his mother, the Youth Officer (O'Driscoll) and the court reporter were the persons present at the time he gave the statement (R. 210) On re-cross, petitioner said that in addition to the above named individuals, he thought Officer Soil was also present. (R. 214)

Petitioner's motion to suppress was denied. (R. 266) Both parties stipulated that all the testimony and exhibits adduced at the hearing on the motion would be incorporated into the evidence at the trial. (R. 279)

Following an adjudicatory hearing, the trial court entered a finding of delinquency against petitioner. (R. 501)

Petitioner Donald Lamb was adjudicated delinquent within the provisions of the Illinois Juvenile Court Act (Ill. Rev. Stat. 1969, Ch. 37, §702-2). The court's declaration of delinquency was based upon a finding that petitioner had committed the offense of murder in violation of Ill. Rev. Stat. 1969, Ch. 38, § 9-1 (a)(2). It is contended here that the trial court improperly received into evidence inculpatory statements given by petitioner prior to trial. A written statement was given to an Assistant State's Attorney, in the presence of petitioner's mother and several police officers.

The determination of the question whether a confession is the product of a free will must be answered on the facts of each case, and no single fact is dispositive. Brown v. Illinois 95 S Ct. 2254 at 2261, see also Columba v. Connecticut, 367 U.S. 568 (1961); Rogers v. Richmond, 365 U.S. 534 (1961); Fikes v. Alabama, 352 U.S. 191 (1957). The voluntariness of a confession need be proved only by a preponderance of the evidence. Lego v. Twomey, 404 U.S. 477 (1972).

Petitioner's claims of physical and mental abuse are unsupported by any other evidence in the record (even the testimony

of his mother), and are directly contradicted by each of the police officers. The testimony of the police officers involved in petitioner's detention <sup>1</sup> indicated that he received numerous warnings of his constitutional rights in compliance with Miranda v. Arizona, 384 U.S. 436 (1966), and was not subjected to any brutality or harassment. The evidence further indicates that at sixteen years of age, petitioner was not a stranger to the criminal justice system, possessing a prior record for obstruction of justice, aggravated battery with a gun, and several station adjustments for curfew violations.

Petitioner was given food upon request, and served what he had ordered. His mother was timely informed of his detention and was transported to and from the stationhouse by the police officers. She was permitted to spend extended periods of time with petitioner and to engage in private conversation with him. Petitioner had ample opportunity to complain of police mistreatment to his mother or the Assistant State's Attorney when giving his written statement but did not do so, and his statement specifically denies that he had been mistreated or coerced into giving the statement. Based on the totality of the circumstances surrounding petitioner's confession, it is clear that the trial court's finding that it was voluntarily given was not erroneous.

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1. The only indication in the record relating to the legality of the arrest is that Officers Soil and Blackley picked up the petitioner on the basis of information left for them by the day-watch officers. The petitioner never raised the issue of probable cause for arrest and therefore the trial court heard no evidence on the issue. Contra, Brown v. Illinois U.S. 95 S. Ct. 2254 where the decision was premised on an acknowledged illegal arrest. The Supreme Court of Illinois correctly held that this issue could not be initially alleged on appeal, and was waived by not raising it in the trial court.

#### C O N C L U S I O N

For the reasons herein stated, respondent respectfully requests that the petition for writ of certiorari to the Supreme Court of Illinois be denied.

Respectfully submitted,

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